# FUNDAMENTALS OF TRIAL ADOVCACY COURSE

August 21-25, 2017 Phoenix, Arizona



# **ETHICS FOR PROSECUTORS**

Presented by:

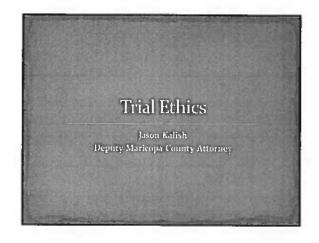
## **JASON KALISH**

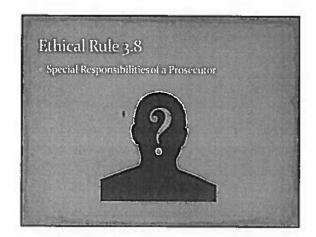
Deputy Maricopa County Attorney Maricopa County Attorney's Office

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> ELIZABETH ORTIZ EXECUTIVE DIRECTOR





Responsibilities of a Prosecutor prosecute a case unsupported by probable caus
sure accused is advised of right to counse!
eck unrepresented to waive pretrial rights
y disclosure of everything that helps defense close all mitigating evidence

# Ethical Rule 3.3 Candor Toward the Tribunal No false statement of facts or law Correct any false statement Disclose adverse authority Do not offer false evidence Ethical Rule 3.4 Fairness to Opposing Party and Counsel Don't obstruct access to, destroy or conceal evidence Don't falsify evidence or assist in false testimony

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Prosecutor places the prestige of the government behind its witnesses

Diligently comply with discovery requests
At trial don't
Allude to irrelevant evidence

Assert personal knowledge State a personal opinion

Prosecutor suggests that information not presented to the jury supports the witness's testimony.

Vouching  Make all your arguments based on the evidence at trial.	
Comment on Right to Remain Silent  Note that the burden of proof is on the prosecution and that the Defendant has failed to call wirnesses to support the theory.  Except when only witness who could do so is the Defendant.  When a prosecutor comments on a defendant's failure to present evidence to support his or her theory of the case, it is neither improper nor shifts the burden of proof to the defendant so long as such comments are not intended to direct the jury's attention to the defendant's failure to testify. State w. Martinez. 130 Atiz. 80, 82-83, 634 P. 2d 7, 9-10 (App.1981).	
Personal Attacks  You have to keep in mind that everything that you-oryour decision has to be based on what came from the witness stand. It can't be based on what came from that chair-I'm pointing to [defense counsel's] chair.  You remember during his opening statement, he wove quite a tale to you about what happened on the way down to south Phoenix or perhaps what you thought the evidence would be. That's not what the evidence was. None of that is before you, you are not to consider it. There is nothing in the evidence at trial that supports it.	

## Were they lying?

Arizona prohibits lay and expert testimony concerning the veracity of a statement by another wincess. State v. Moran, 151 Ariz. 378, 382, 728 P.2d 248, 252 (1986) (expert witness): State v. Reimer, 189 Ariz. 239, 240–41, 941 P.2d 912, 913–14 (App.1907) (lay witness). Determining veracity and credibility lies within the province of the jury, and opinions about witness credibility are "nothing more than advice to jurors on how to decide the case." Moran, 151 Ariz. at 383, 728 P.2d at 253.

### Were they lying?

- So what Juli [the manager] came up and testified to earlier teslay, and year were sitting right here, that was all a fie?

- Yeah And [the clest] was lying when she said that you seal the F word, right?
- Q. And [the cleat] was tyling when she and that you and the E-wood, right
  A. Livenid may say each.
  Q. OKap, So we got two Bars that I brought up on the stand fields, right?
  A. Appears to beyvesti.
  Q. Bus you're tree a list, right?

## Were they lying?

- So what lack (the manager) currently and testified to earlier teslag, and you were sutting aight fere, none of that happened, right?